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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/605,447 | 09/30/2003 | Nikolay Korovin | 40696.0300 | 2446 |
| 84387 | 7590 | 10/21/2010 | EXAMINER | |
| SNELL & WILMER L.L.P. (Novellus) One Arizona Center 400 East Van Buren Street Phoenix, AZ 85004-2202 | | | | ELEY, TIMOTHY V |
| ART UNIT | | PAPER NUMBER | | |
| 3723 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 10/21/2010 | | PAPER | | |

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NIKOLAY KOROVIN, STEVE SCHULTZ, and JOHN HERB

Appeal 2009-006631
Application 10/605,447
Technology Center 3700

Before WILLIAM F. PATE, III, STEFAN STAICOVICI and
KEN B. BARRETT, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Nikolay Korovin et al. (Appellants) appeal under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 15-23. Claims 1-14 and 24 have been canceled. Claim 25 has been withdrawn by the Examiner. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

THE INVENTION

Appellants' invention relates to an integrated pressure control system for a workpiece carrier that applies pressure to the backsurface of a workpiece during planarization. Spec., para. [0001].

Claim 15 is representative of the claimed invention and reads as follows:

15. An integrated pressure control system for planarizing a workpiece comprising:

a multizone workpiece carrier having a plurality of pressurizable zones;

a pressure control system mounted to said carrier for controlling pressure provided to said plurality of pressurizable zones; and

a rotary union mounted on said carrier for connecting electrical lines to said pressure control system.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

| | | |
|--------|--------------------|---------------|
| Zias | US 4,051,712 | Oct. 4, 1977 |
| Liu | US 5,720,845 | Feb. 24, 1998 |
| Muller | US 5,980,361 | Nov. 9, 1999 |
| Berman | US 2003/0211811 A1 | Nov. 13, 2003 |

Maloney US 7,029,382 B2 Apr. 18, 2006

The following rejections are before us for review:

The Examiner rejected claims 15, 17, 19-21, and 23 under 35 U.S.C. § 103(a) as unpatentable over Liu and Maloney.

The Examiner rejected claims 15, 17, and 19-21 under 35 U.S.C. § 103(a) as unpatentable over Berman and Maloney.

The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as unpatentable over Liu or Berman, Maloney, and Zias.²

The Examiner rejected claims 18 and 22 under 35 U.S.C. § 103(a) as unpatentable over Liu, Maloney, and Muller.

SUMMARY OF DECISION

We AFFIRM.

ANALYSIS

The obviousness rejections over Liu or Berman and Maloney

The Examiner found that both Liu and Berman disclose all the claim limitations of independent claims 15 and 20 with the exception of “a rotary union mounted on said carrier,” as per independent claim 15, or “a rotary union mounted to said carrier,” as per independent claim 20. Non-Final

² Although the Examiner failed to include the teachings of Maloney in the heading of this rejection, the Examiner takes note that because claim 16 depends from independent claim 15, the rejection should include the teachings of Maloney. We consider this to be an inadvertent error on the part of the Examiner and for the purpose of this appeal we shall consider claim 16 to be rejected under 35 U.S.C. § 103(a) as unpatentable over Liu or Berman, Maloney, and Zias.

Rejection 2-4, mailed Nov. 27, 2006. The Examiner further found that Maloney discloses, “a rotary union mounted to a workpiece carrier for communicating stationary supply sources/lines external to the carrier.” *Id.* at 2-3. *See also*, Maloney, col. 11, lines 10-36. According to the Examiner, “[t]he rotary union of Maloney is mounted to the carrier since the rotary union is mounted to the shaft, which is in turn mounted to the carrier.” Final Rejection 2-3, mailed Jan. 8, 2008. Appellants argue that the phrase “mounted on said carrier,” as per claim 15, and “mounted to said carrier,” as per claim 20, should be construed to “mean that the rotary union is mounted to the carrier itself and not another item located between the carrier and the rotary union.” Br. 7. In other words, it appears that Appellants would have us construe the phrase “mounted *on* said carrier,” as per claim 15, and the phrase “mounted *to* said carrier,” as per claim 20, to mean that the rotary union is mounted *directly* to the carrier. Emphasis added.

We find Appellants’ argument unpersuasive because it is not commensurate in scope with the location of the rotary union, as called for in claims 15 and 20, which does not require direct contact between the rotary union and the workpiece carrier. As stated by our reviewing court in *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998), “the name of the game is the claim.” It is well established that limitations not appearing in the claims cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). If Appellants had wanted to limit the claim to a direct connection between the rotary union and the workpiece carrier, they could have done so by modifying the term “mounted” with the term “directly” in the claim language.

Appellants always have the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). Although we appreciate that in paragraph [0029] of Appellants' Specification an embodiment is described where the “[r]otary union 70 is located on an outer top surface of carrier head 52,” nonetheless, we must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004)³. The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Appellants further argue that because Liu utilizes actuators with moving parts, Berman utilizes addressable transducers, and Malone utilizes pressurized pneumatic fluids to apply pressure to pressurizable zones, it would not have been obvious for a person of ordinary skill in the art to combine the teachings of Liu or Berman and Malone. Br. 7-9. We find Appellants' argument unpersuasive because Appellants appear to attack the teachings of Liu, Berman, and Malone individually, rather than the combination of Liu or Berman and Malone. Nonobviousness cannot be

³ “Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”

established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

In conclusion, for the foregoing reasons, the rejections under 35 U.S.C. § 103(a) of claims 15, 17, 19-21, and 23 as unpatentable over Liu and Maloney and claims 15, 17, and 19-21 as unpatentable over Berman and Maloney are sustained.

The obviousness rejections of claims 16, 18, and 22

With respect to the rejections under 35 U.S.C. § 103(a) of claim 16 as unpatentable over Liu or Berman, Maloney, and Zias and of claims 18 and 22 as unpatentable over Liu, Maloney, and Muller, Appellants do not present any arguments in addition to the arguments presented above. Br. 9-10. Accordingly, the rejections under 35 U.S.C. § 103(a) of claim 16 as unpatentable over Liu or Berman, Maloney, and Zias and of claims 18 and 22 as unpatentable over Liu, Maloney, and Muller are likewise sustained.

SUMMARY

The decision of the Examiner to reject claims 15-23 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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SNELL & WILMER L.L.P.
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET
PHOENIX, AZ 85004-2202